

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL FREDDIE RAMIREZ,)	CASE NO. ED CV 12-1673-SVW (RZ)
)	
Petitioner,)	
)	ORDER TO SHOW CAUSE
vs.)	
)	
K. HOLLEN, Warden,)	
)	
Respondent.)	

The Court issues this Order To Show Cause directed to Petitioner because the face of the petition suggests that the action may be time-barred.

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a portion of which established a one-year statute of limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the limitations period commences on the date a petitioner’s conviction became final. *See* 28 U.S.C. § 2244(d)(1). The limitations period will start instead on one of the following dates, whichever is latest, if any of them falls after the petitioner’s conviction becomes final: the date on which a State-created impediment – itself a violation of Constitutional law – was removed; the date on which a newly-recognized Constitutional right was established; or the date on which the factual predicate for the claims could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

1 The time spent in state court pursuing collateral relief in a timely manner is
2 excluded, *see* 28 U.S.C. § 2244(d)(2), and the courts have held that the statute also is
3 subject to equitable tolling. *See Holland v. Florida*, __ U.S. __, 130 S. Ct. 2549, 2562, 177
4 L. Ed. 2d 130 (2010).

5 The current petition was filed on October 2, 2012. From the face of the
6 petition and from judicially-noticeable materials, the Court discerns that –

- 7 (a) On August 10, 2004, in San Bernardino County Superior Court, Petitioner
8 pleaded guilty to second degree burglary and admitted to having two prior
9 strike convictions. Based in part on his prior felony convictions, he was
10 sentenced to prison for 25 years to life. Pet. ¶ 2.
- 11 (b) On March 11, 2005, the California Court of Appeal affirmed Petitioner's
12 conviction and sentence. Petitioner did not seek further direct review in the
13 California Supreme Court.
- 14 (c) Petitioner's conviction became final on April 19, 2005, forty days after the
15 Court of Appeal affirmed his conviction. *See* Cal. R. Ct. 8.264(b)(1),
16 8.500(e)(1); *see also Smith v. Duncan*, 297 F.3d 809, 812-13 (9th Cir. 2002).
- 17 (d) Nearly three years passed. On March 18, 2008, Petitioner filed the first of
18 three state court habeas petitions. The second of the three state court petitions
19 was denied on November 3, 2008.
- 20 (e) Over three years passed. On January 13, 2012, Petitioner filed the last of his
21 three state court habeas petitions. The California Supreme Court rejected his
22 final state court habeas petition on April 25, 2012.

23 Unless this Court has miscalculated the limitations period, or some form of
24 additional tolling applies in sufficient measure, this action is time-barred. Petitioner
25 suggests that the statute of limitations should be tolled because he did not learn of the
26 applicable limitations period until 2008, after which he filed his first state court habeas
27 petition. AEDPA's limitations period may be subject to equitable tolling, if the petitioner
28 shows that extraordinary circumstances prevented him from filing a timely federal habeas

1 petition *and* the petitioner has acted diligently in pursuing his rights. *Holland*, 130 S. Ct.
2 at 2562. However, the Ninth Circuit has made clear that a habeas petitioner's ignorance
3 of the law is not sufficient to warrant equitable tolling. *Ford v. Pliler*, 590 F.3d 782, 790
4 (9th Cir. 2009) (stating that "petitioner's confusion or ignorance of the law alone" has
5 never satisfied high standard to warrant equitable tolling) (citations omitted). Accordingly,
6 Petitioner's purported ignorance of the applicable statute of limitations is not sufficient to
7 warrant equitable tolling.

8 Moreover, even if Petitioner's purported ignorance of the limitations period
9 warranted equitable tolling, the current Petition would still be untimely because of the more
10 than three-year interval between the date on which Petitioner's second state court habeas
11 petition was denied and the date on which Petitioner filed his third state court habeas
12 petition. California has never definitively stated what is "reasonable" in terms of the
13 intervals between the denial of a petition in one court and the filing of a subsequent petition
14 in a higher court. *See Velasquez v. Kirkland*, 639 F.3d 964, 967 (9th Cir. 2011). The
15 United States Supreme Court, however, has instructed courts to assume that California law
16 does not differ significantly from other states with determinate timeliness rules. *Evans v.*
17 *Chavis*, 546 U.S. 189, 198, 126 S. Ct. 846, 163 L. Ed. 2d 684 (2006). Therefore,
18 unjustified filing delays longer than thirty to sixty days are unreasonable. *Chaffer v.*
19 *Proper*, 592 F.3d 1046, 1048 (9th Cir. 2010) (*per curiam*). Consequently, statutory tolling
20 is inapplicable to such delays. *Id.* Thus, statutory tolling is inapplicable to the three-year
21 period between November 3, 2008 (the date on which the Court of Appeal denied
22 Petitioner's second state court habeas petition) and January 13, 2012 (the date on which
23 Petitioner filed his third state court habeas petition in the California Supreme Court).

24 This Court may raise *sua sponte* the question of the statute of limitations bar,
25 so long as it gives Petitioner an opportunity to be heard on the matter. *Herbst v. Cook*, 260
26 F.3d 1039 (9th Cir. 2001). Accordingly, Petitioner shall show cause why this action should
27 not be dismissed as being barred by the one-year statute of limitations. Petitioner shall file
28

1 his response to the Court's Order to Show Cause not later than 21 days from the filing date
2 of this Order.

3 If Petitioner does not file a response within the time allowed, the action may
4 be dismissed for failure to timely file, and for failure to prosecute.

5 IT IS SO ORDERED.

6
7 DATED: October 15, 2012

8 
9 _____
10 RALPH ZAREFSKY
11 UNITED STATES MAGISTRATE JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28